



Legislative Instrument

Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020

I, Christopher David Jordan, Commissioner of Taxation, make this determination under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* and subsection 8(6) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.

Christopher David Jordan
Commissioner of Taxation
Dated: 22 September 2020

1. Name of instrument

This determination is the *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020*.

2. Commencement

This instrument commences on the day after it is registered on the Federal Register of Legislation.

3. Application

The instrument applies for a class of entities seeking to be qualifying employers for JobKeeper payments, when the Commissioner is satisfied that there is not an appropriate relevant comparison period for the purposes of satisfying both:

- the actual decline in turnover test in section 8B of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules) for JobKeeper fortnights starting on, or after, 28 September 2020, and
- the decline in turnover test in section 8 of the Rules (and if applicable, section 8A of the Rules) for JobKeeper fortnights starting on, or after, 28 September 2020.

This instrument applies to provide alternative bases for satisfying both of those tests.

Note: Where an entity has satisfied the decline in turnover test under section 8 of the Rules for JobKeeper fortnights before 28 September 2020, they do not need to apply the test again for JobKeeper fortnights starting on, or after, 28 September. The entity will only need to apply this instrument for the purposes of satisfying the actual decline in turnover test in section 8B of the Rules.

4. Determination

This determination applies to entities, in the classes of entities described in this determination, seeking to be a qualifying employer for JobKeeper payments covered by sections 7 to 13 of this instrument.

5. Definitions

Subject to any addition or change contained in another paragraph, an expression used in this instrument that is defined in section 4 of the Rules (including, for the avoidance of doubt subsection 4(2) of the Rules) has the same meaning in this instrument as it has in the Rules.

In this instrument:

Business includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

Current GST turnover has the same meaning as in the Rules.

Note: For the purposes of the actual decline in turnover test in section 8B of the Rules, the Commissioner may make a legislative instrument that the supplies in a class of supplies are to be treated as if they had been made at a time or times different from the time at which the supplies were actually made. Any such determination by the Commissioner applies to the calculation of current GST turnover for a relevant comparison period in this instrument.

Drought Help concessions means any concessions given by the Australian Taxation Office where drought has caused financial difficulty and any Disaster Recovery Funding Arrangements 2018 assistance measures.

Entity means an individual, a body corporate, a body politic, a partnership, any other unincorporated association or body of persons, a trust, a superannuation fund, and approved deposit fund.

Relevant comparison period has the same meaning as in the Rules.

Small partnership is a partnership as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* with four or fewer individual partners.

Turnover test period has the same meaning as in the Rules.

6. Repeals

This instrument repeals the *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020* (F2020L00461) registered on 24 April 2020. The instrument is repealed at the end of 27 September 2020.

Alternative decline in turnover tests

7. Business commenced

- (1) An entity applies either of the alternative tests under this section if the entity commenced business after the first day of the relevant comparison period and before 1 March 2020.
- (2) The first alternative test is:

the entity multiplies the average monthly current GST turnover by three and uses that figure instead of the entity's current GST turnover for a relevant comparison period, that is a quarter, for the purposes of section 8, section 8A and section 8B of the Rules.
- (3) The average monthly current GST turnover is:
 - (a) if the entity commenced business before 1 February 2020, the sum of the entity's current GST turnover for each whole month after the entity commenced business and before 1 March 2020 divided by the number of whole months, or
 - (b) if the entity started business before 1 March 2020, but on or after 1 February 2020, the entity's current GST turnover before 1 March 2020, divided by the number of days the entity was in business and multiplied by 29.

- (4) The second alternative test is:
the entity uses the 3 months' current GST turnover instead of the entity's current GST turnover for a relevant comparison period, that is a quarter, for the purposes of section 8, section 8A and section 8B of the Rules.
- (5) The 3 months' current GST turnover is the total of the current GST turnover in the 3 months immediately before 1 March 2020.
- (6) The second alternative test in subsection (4) and paragraph (7)(b) is not available if the entity had not commenced business at least 3 months before 1 March 2020.
- (7) If the relevant comparison period is a calendar month:
- (a) for the first alternative test, the entity uses the average monthly current GST turnover instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8 and section 8A of the Rules; and
 - (b) for the second alternative test, the entity divides the 3 months' current GST turnover by 3 and uses that figure instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8 and section 8A of the Rules.

Note: This subsection is only applicable for the decline in turnover test under section 8 of the Rules including section 8A of the Rules (if applicable).

- (8) For the purposes of subsections (3), and (5), if the entity:
- (a) qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals, then the entity may exclude the calendar months covered by the Bushfires 2019–20 lodgment and payment deferrals from the calculation, unless those are the only months since the entity commenced the business, or
 - (b) received Drought Help concessions, then the entity may exclude the months covered by the Drought Help concessions from the calculation, unless those are the only months since the entity commenced the business.

8. Business acquisition or disposal that changed the entity's current GST turnover

- (1) An entity applies the alternative test under this section if:
- (a) there was an acquisition or disposal of part of their business at, or after, the start of the relevant comparison period and before the applicable turnover test period, and
 - (b) the acquisition or disposal changed the entity's current GST turnover.
- (2) The alternative test is:
the entity multiplies the current GST turnover from the month immediately after the month in which the acquisition or disposal occurred by three and uses that figure instead of the entity's current GST turnover for a relevant comparison period, that is a quarter, for the purposes of section 8, section 8A and section 8B of the Rules.
- (3) For the purposes of subsections (2) and (4), if there is no whole month after the acquisition or disposal and before the applicable turnover test period, then use the month immediately before the applicable turnover test period.
- (4) If the relevant comparison period is a calendar month, the entity uses the current GST turnover from the month immediately after the month in which the acquisition or disposal occurred instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8 and section 8A of the Rules.

Note: This subsection is only applicable for the decline in turnover test under section 8 of the Rules including section 8A of the Rules (if applicable).

- (5) For the purposes of subsections (2), (3) and (4), if the entity:
- (a) qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals, then the entity may exclude the months covered by the Bushfires 2019–20 lodgment and payment deferrals and use the nearest month before or after the acquisition or disposal as appropriate, unless the months covered by the concession are the only months available, or
 - (b) received Drought Help concessions, then the entity may exclude the months covered by the Drought Help concessions and use the nearest month before or after the acquisition or disposal as appropriate, unless the months covered by the concession are the only months available.

9. Business restructure that changed the entity's current GST turnover

- (1) An entity applies the alternative test under this section if:
- (a) there was a restructure of their business, or part thereof, at, or after, the start of the relevant comparison period and before the applicable turnover test period, and
 - (b) the restructure changed the entity's current GST turnover.
- (2) The alternative test is:
- the entity multiplies the current GST turnover from the month immediately after the month in which a restructure occurred by three and uses that figure instead of the entity's current GST turnover for a relevant comparison period, that is a quarter, for the purposes of section 8, section 8A and section 8B of the Rules.
- (3) For the purposes of subsections (2) and (4), if there is no whole month after the restructure and before the applicable turnover test period, then use the month immediately before the applicable turnover test period.
- (4) If the relevant comparison period is a calendar month, the entity uses the current GST turnover from the month immediately after the month in which the restructure occurred instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8 and section 8A of the Rules.

Note: This subsection is only applicable for the decline in turnover test under section 8 of the Rules including section 8A of the Rules (if applicable).

- (5) For the purposes of subsections (2), (3) and (4), if the entity:
- (a) qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals, then the entity may exclude the months covered by the Bushfires 2019–20 lodgment and payment deferrals and use the nearest month before or after the restructure as appropriate, unless the months covered by the concession are the only months available, or
 - (b) received Drought Help concessions, then the entity may exclude the months covered by the Drought Help concessions and use the nearest month before or after the restructure as appropriate, unless the months covered by the concession are the only months available.

10. Business had substantial increase in current GST turnover

- (1) An entity applies the alternative test under this section if the entity had an increase in the entity's current GST turnover of:
- (a) 50% or more in the 12 months immediately before:
 - (i) the applicable turnover test period; or

- (ii) 1 March 2020, or
 - (b) 25% or more in the 6 months immediately before
 - (i) the applicable turnover test period; or
 - (ii) 1 March 2020, or
 - (c) 12.5% or more in the 3 months immediately before
 - (i) the applicable turnover test period; or
 - (ii) 1 March 2020.
- (2) The alternative test is:
the entity uses the 3 months' current GST turnover instead of the entity's current GST turnover for a relevant comparison period, that is a quarter, for the purposes of section 8, section 8A and section 8B of the Rules.
- (3) The 3 months' current GST turnover is:
- (a) if subparagraphs (1)(a)(i), (1)(b)(i) or (1)(c)(i) apply, the total of the entity's current GST turnover in the 3 months immediately before the applicable turnover test period, or
 - (b) if subparagraphs (1)(a)(ii), (1)(b)(ii) or (1)(c)(ii) apply, the total of the entity's current GST turnover in the 3 months immediately before 1 March 2020.
- (4) If the relevant comparison period is a calendar month, the entity divides the 3 months' current GST turnover by 3 and uses that figure instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8 and section 8A of the Rules.
- Note:** This subsection is only applicable for the decline in turnover test under section 8 of the Rules including section 8A of the Rules (if applicable).
- (5) For the purposes of subsections (2), (3) and (4), if the entity:
- (a) qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals, the entity may use the 3-month period before the Bushfires 2019–20 lodgment and payment deferrals commenced to calculate the 3 months' current GST turnover, or
 - (b) received Drought Help concessions, the entity may use the 3-month period before this concession commenced to calculate the 3 months' current GST turnover.

11. Business affected by drought or natural disaster

- (1) An entity applies the alternative test under this section if:
- (a) the entity conducted business or some of the business in a declared drought zone, or declared natural disaster zone, during the relevant comparison period, and
 - (b) the drought or natural disaster changed the entity's current GST turnover.
- (2) The alternative test is the entity uses the entity's current GST turnover for the same period in the year immediately before the declaration instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8, section 8A and section 8B of the Rules.

12. Business has an irregular turnover

- (1) An entity applies the alternative test under this section if:
- (a) for the consecutive 3-month periods ending in the 12 months immediately before:
 - (i) the applicable turnover test period; or
 - (ii) 1 March 2020,

the lowest of the entity's current GST turnover for any of those 3-month periods is no more than 50% of the highest of the entity's current GST turnover for any other of those 3-month periods, and

(b) the entity's current GST turnover is not cyclical.

(2) The alternative test is:

the entity multiplies the average monthly current GST turnover by three and uses that figure instead of the entity's current GST turnover for a relevant comparison period, that is a quarter, for the purposes of section 8, section 8A and section 8B of the Rules.

(3) The average monthly current GST turnover is:

(a) if subparagraph (1)(a)(i) applies, the sum of the entity's current GST turnover for each whole month in the 12 months immediately before the applicable turnover test period divided by 12, or

(b) if subparagraph (1)(a)(ii) applies, the sum of the entity's current GST turnover for each whole month in the 12 months immediately before 1 March 2020 divided by 12.

(4) If the relevant comparison period is a calendar month, the entity uses the average monthly current GST turnover instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8 and section 8A of the Rules.

Note: This subsection is only applicable for the decline in turnover test under section 8 of the Rules including section 8A of the Rules (if applicable).

(5) For the purposes of subsections (2), (3) and (4), if the entity:

(a) qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals, then the entity may exclude the calendar months covered by the Bushfires 2019–20 lodgment and payment deferrals from the calculation, unless the months covered by the concession are the only months available, or

(b) received Drought Help concessions, then the entity may exclude the months covered by the Drought Help concessions from the calculation, unless the months covered by the concession are the only months available.

13. Sole trader or small partnership with sickness, injury or leave

(1) An entity applies the alternative test under this section if:

(a) the entity is a sole trader or small partnership that has no employees,

(b) the sole trader or at least one of the partners did not work for all or part of the relevant comparison period due to sickness, injury or leave, and

(c) the current GST turnover of the sole trader or partnership was affected by the sole trader or partner not working for all or part of that period.

(2) The alternative test is:

the entity multiplies the current GST turnover from the month immediately before the month in which the sole trader or partner did not work due to sickness, injury or leave by three and uses that figure instead of the entity's current GST turnover for a relevant comparison period, that is a quarter, for the purposes of section 8, section 8A and section 8B of the Rules.

(3) If the relevant comparison period is a calendar month, the entity uses the current GST turnover from the month immediately before the month in which sole trader or partner did not work due to sickness, injury or leave instead of the entity's current GST turnover for a relevant comparison period for the purposes of section 8 and section 8A of the Rules.

Note: This subsection is only applicable for the decline in turnover test under section 8 of the Rules including section 8A of the Rules (if applicable).

- (4) For the purposes of subsections (2) and (3), if the entity:
- (a) qualified for the ATO's Bushfires 2019–20 lodgment and payment deferrals in the month immediately before the month in which the sickness, injury or leave occurred, then the entity may use the nearest month before the months covered by the Bushfires 2019–20 lodgment and payment deferrals, unless the months covered by the concession are the only months available, or
 - (b) received Drought Help concessions in the month immediately before the month in which the sickness, injury or leave occurred, the entity may use the nearest month before the months covered by the Drought Help concessions, unless the months covered by the concession are the only months available.